IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 766 OF 1999

Kum Gautami Sharad Sawlikar
A/12, Rev. Society, I.C.S.
Colony, Pune: 411 007 ..Petitioner

Vs.

1. State of Maharashtra through its Secretary, Tribal Development Department, Mantralaya, Mumbai - 400 032.
2. Chairman Committee for Scrutiny and Verification of Tribe Claims, Pune.
3. Secretary, Finance Department Govt. of Maharashtra, Mantralaya, Mumbai: 400 032. ..Respondents

Mr. D.A. Nalawade for petitioner.
Mr. Vinay Sonpal, AGP for respondent nos.1 to 3.

CORAM: B.H. MARLAPALLE & NARESH H. PATIL,JJ.
Date : October 11, 2006.

ORAL JUDGMENT (Per B.H. Marlapalle,J.):

1. By the impugned decision of the Scrutiny Committee for Scheduled Tribe passed on 25/11/1998 the petitioner's claim that she belongs to "Halba" Scheduled Tribe has been rejected.

2. The petitioner was issued caste certificate by the Tahsildar and Executive Magistrate, Pune City on 7/7/1989 as belonging to "Hindu Halba Tribe". On

passing her M.Sc., she appeared for the M.P.S.C. examination for Class-A post selection in the Maharashtra Finance and Accounts Services Class "A" (Junior) and as a result of the said selection post she came to be appointed in the Maharashtra Finance and Accounts Service Class-A (Junior) on 21/9/1997 and against the reserved post of Scheduled Tribe. Admittedly, on rejection of her Tribe's claim by the impugned decision of the Scrutiny Committee, she came to be removed from service by an order dated 1/7/1999 while she was holding the post of Chief Auditor and Accounts Officer.

3. The learned counsel for the petitioner has relied upon the decision of this Court in the case of Jaydeo Mahadeo Parate vs. State of Maharashtra and ors. **[2006 (2) Mh.L.J. 497]** in support of his claim that even if the caste claim was found to be invalidated, her employment was required to be protected. It is not necessary to refer to the said judgment as of now more so when we are satisfied that there is lack of prima facie material to find fault with the impugned decision so as to hold that the petitioner belongs to the Halba Tribe. Admittedly,

she is the resident of Chandrapur District and her father has been all along under the State Government service. The caste certificate was, therefore, required to be issued in her favour by the Executive Magistrate, Chandrapur and not by the Tahsildar and Executive Magistrate, Pune City. The learned counsel for the petitioner submitted before us that though originally the caste of the petitioner's father and grand-father was recorded as Koshti, the grandfather had taken steps to correct the caste as "Halba" in the school record of the petitioner's father i.e. Sharadchandra. The Scrutiny Committee noted that this claim could not be accepted because the caste of Prakash Dashrath Sawlikar i.e. the brother of Sharadchandra was also shown as Koshti on the date of his admission in the school on 1/4/1953.

4. Notwithstanding the reasoning set out by the Scrutiny Committee in the impugned decision, we are satisfied that the petitioner's tribe claim requires to be remanded for fresh consideration mainly on two grounds, (a) that the petitioner's father Sharadchandra was in the State Government employment and he got all the benefits as a scheduled tribe and

(b) it is contended that Sharadchandra's caste was correctly recorded by following the due process of law in the school record way back in the year 1951. This could be verified by bringing on record the admission registers of the concerned school and examine the Headmaster of the school. At the same time the service book of the petitioner's father could also be placed before the Scrutiny Committee. There is one more aspect which was pointed out before us and which requires to be followed on remand. The Vigilance report was submitted by the Inspector of the Vigilance Cell and it appears that no officer from the Social Welfare Department or the Tribal Development Department was part of the Vigilance Cell at the relevant time. As per the law laid down by the Apex Court, the constitution of the Vigilance Cell is required to be followed and on remand it is necessary for the Scrutiny Committee to direct a fresh investigation/inquiry by the Vigilance report in the claim of the petitioner that she belongs to Halba Scheduled Tribe.

5. We, therefore, allow the petition partly and quash and set aside the impugned decision of the

Scrutiny Committee. The petitioner's claim that she belongs to Halba Scheduled Tribe is hereby remanded for fresh scrutiny by the Committee at Nagpur and we make it clear that the petitioner will have to obtain a fresh caste certificate from Chandrapur District and submit before the said Scrutiny Committee along with all other documents that she may like to rely upon. We also direct that fresh inquiry by the Vigilance Cell will be ordered by the Committee on remand. The claim shall be adjudicated afresh as expeditiously as possible and preferably by 31st May, 2007. We make it clear that this order will not support the petitioner's claim for reinstatement, as at present.

6. Writ to go forthwith to all the concerned, including the Caste Verification and Scrutiny Committee for scheduled tribes at Nagpur. We also make it clear that on remand the Committee will take the decision on its own merits and without being influenced by the observations made in this order.

(Naresh H. Patil, J.) **(B.H. Marlapalle,J.)**